

**Office of Chief Counsel
Internal Revenue Service**

memorandum

CC:SB:3:NAS:2:TL-153546-01
EFHolman

date:

to: Memphis Service Center
SB/SE Compliance Director
Attn: Acting Examination Section Chief
(Edie Somerville)

from: Associate Area Counsel
Small Business/Self-Employed - Area 3 (Nashville)

subject: **Disposition of Cases Reflecting Black Reparations Credit
and Request for Refund**

ISSUE

What disposition should be given to original returns that reflect a credit related to Black reparations and reflect a claimed overpayment of approximately \$40,000.00 (\$80,000.00 on joint returns) that the Service has not refunded?

CONCLUSION

Pursuant to pertinent Treasury Regulations and Revenue Rulings, these original returns should be treated as claims for refund, and notices of claim disallowance should be issued by certified or registered mail, commencing the two-year period provided by I.R.C. § 6532(a) for the filing of refund suits in District Court.

FACTS

On September 24, 2001, we received an electronic mail message from Edie Somerville, Acting Examination Section Chief in the Compliance Service Center at Memphis, Tennessee. Ms. Somerville was concerned about the disposition of several hundred returns each of which reflects an overpayment based on the taxpayer's claim of a Black reparations credit in one form or another.¹

¹ Some of the returns contain a Form 2439 on which the taxpayer claimed a Black Investment Credit involving an under distribution from a RIC or REIT. However, the Service Center personnel reported that most of these type returns currently held

Because of the attention given these credit claims over the last year, these returns were processed without the issuance of a refund. However, because these returns were filed prior to the date set for transfer of such returns to the frivolous return unit at the Ogden Service Center, these several hundred returns are still being monitored at Memphis.

For most, if not all, of these taxpayers, statutory notices of deficiency were prepared that reflected a tax amount due of zero. A deficiency in the amount of the overstated credit was initially shown, but this was eliminated by an adjustment to the prepayment credits. This left a deficiency amount reflected on the notice of zero.

A letter has also been sent to each of these taxpayers that reflects the Service's determination that the tax refund claimed on the filed return must be denied. The claim for refund is characterized as based on "a reparation settlement based on the impact of slavery". The letter states that no law authorizes the Service to honor such tax claims. Because you are aware that Chief Counsel's National Office has issued more than one Significant Service Center Advice and various Notices on this subject, you have requested direction as to the proper method of disposing of these returns.

DISCUSSION

The National Office did, in fact, issue significant Service Center Advice on July 21, 2000, and again on April 12, 2001. Both of these memorandums addressed the Service's urgent need to recover refunds that had erroneously been made to taxpayers claiming Black reparations credits. The Service needed to determine the proper theory for making assessments against these refund recipients, so that collection activities could immediately proceed. Both of the aforesaid memorandums advised that the summary assessment procedures of I.R.C. § 6201(a)(3) permitted immediate assessment without use of the deficiency procedures. However, in June 2001, the determination was made by the National Office that such summary assessment procedures should not be used, because these refunds do not involve claimed overpayments of withholding tax or excess estimated tax payments. As a result, for cases in which refunds have been issued to taxpayers utilizing Black reparations credits in one form or another, the deficiency procedures must be used. Jeopardy

at the Service Center merely make some reference to "Black reparations credit" on the "Total" line for credits on the tax calculation portion of the return.

assessments (discussed at I.R.C. § 6861 and I.R.C. § 7429) must also be considered. In the event that you discover cases for which refunds have been issued, we will be glad to discuss with you the preparation of statutory notices that do assert deficiencies created by these taxpayers' returns.

However, the determination has been made by Chief Counsel's Office regarding a return that reflects a Black reparations credit but for which no refund has been issued, the Service should simply treat the return as a claim for refund, and a Notice of Claim Disallowance should be issued. Note that Treasury Regulation § 301.6402-3(b)(1) provides that a properly executed individual income tax return is to be treated as a claim for refund within the meaning of I.R.C. § 6402 and 6511 of the Internal Revenue Code for the amount of overpayment disclosed on the return. See Rev. Rul. 76-511. We recognize that letters have been sent to these taxpayers along with the "zero deficiency" statutory notices that inform the taxpayers of their claim's invalidity. However, we believe that official notification of claim disallowance must be sent by certified or registered mail to insure that the two-year period allowed by I.R.C. § 6532(a) to file a refund suit in District Court is commenced.

If no communication has been made with the taxpayer that filed a return on which a refund was claimed based on a Black reparations credit but for which no refund has been issued, the Service should issue a Letter 569(SC), Letter of Claim Disallowance, with regard to the taxpayer's claimed refund. The Letter 569(SC) informs the taxpayer that the Service is proposing to disallow the refund claim and provides the reason. This letter should be accompanied by a Form 3363 (Acceptance of Proposed Disallowance of Claim for Refund or Credit). This form allows the Service to recognize and accept the portion of the refund claim that is not related to the Black reparations credit. By executing the Form 3363, the taxpayer can accept the Service's disallowance determination for part or all of the claimed refund. A Form 2297 (Waiver of Statutory Notification of Claim Disallowance) and Publication 1 should also be sent with the Letter 569(SC). If the taxpayer contests the proposed disallowance or refuses to execute any of the documents within 30 days, Letter 105(SC/SP) should be sent to the taxpayer by certified or registered mail. This letter represents that it is the Service's official notification of claim disallowance and that its issuance starts the two-year period for the taxpayer to file a claim for refund in District Court. This letter also notifies the taxpayer of his right to a conference at the Appeals Office.

You have already notified most, if not all, of these taxpayers of our determination to disallow the claim for refund that is erroneously based on a Black reparations credit. We recommend that the Letter 105 be issued immediately with regard to these taxpayers.

We hope that this discussion of the current position of Chief Counsel concerning claims for refund based on Black reparations credits will be helpful to you in disposing of the several cases reflecting these credits currently being monitored at the Memphis Service Center. If you have any questions concerning this matter, feel free to contact the undersigned at (615) 250-5466.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

ROBERT B. NADLER
Associate Area Counsel
(Small Business/Self-Employed)

By: _____
EDSEL FORD HOLMAN, JR.
Senior Attorney (SBSE)

Attachment: Area Counsel Client Survey